

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT C. HEATH
and JETT E. STUBBS

Appeal No. 2003-0107
Application No. 09/491,094

ON BRIEF

Before ABRAMS, McQUADE and NASE, Administrative Patent Judges.

By the Board

DECISION ON APPEAL

Robert C. Heath, et al. appeal from the final rejection (Paper No. 7) of claims 1 through 3.¹ Claims 4 through 10, the only other claims pending in the application, stand allowed.

THE INVENTION

The invention relates to "disposable lids for cups" (specification, page 1). Representative claims 1 and 2 read as follows:

¹ Claims 1 and 2 have been amended subsequent to final rejection.

1. A disposable lid for a cup comprising an annular clamp adapted to be seated on a rim of the cup, said clamp having inner and outer lips to grip inner and outer walls of a lip of the cup inserted therebetween and a spout extending upwardly from a tip of said clamp to a discharge port at an apex thereof, an inner wall of said clamp and an inner wall of said spout converging smoothly to said discharge port, said spout being entirely above said clamp.

2. A disposable lid for a cup comprising an annular clamp adapted to be seated on a rim of the cup, said clamp having inner and outer lips to grip inner and outer walls of a lip of the cup inserted therebetween and a frustoconical spout extending upwardly from said rim to a discharge port at an apex thereof, said spout having a truncation in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder and a base inside diameter equal to a top inside diameter of said clamp wherein an inner wall of said clamp and an inner wall of said spout converge smoothly to said discharge port.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Meyers	4,953,737	Sep. 04, 1990
Freeman et al. (Freeman)	5,186,347	Feb. 16, 1993

THE REJECTION

Claims 1 through 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of Meyers.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 11 and 13) and to the examiner's answer (Paper No. 12) for the respective positions of the appellants and the examiner regarding the merits of this rejection.

DISCUSSION

Freeman, the examiner's primary reference, discloses a closure or lid for a beverage container. The closure 10 has a depending peripheral lip for extending about, and attaching the lid to, the upper rim of the container (see Figures 2 and 5) and an upwardly projecting discharge spout 12 disposed entirely above the peripheral lip. Freeman conveys no detail as to the peripheral lip beyond that which is depicted in the drawings. The drawings (see Figures 2 and 5) also show the closure as having what appears to be a depending ring located radially inwardly of the peripheral lip for contacting the upper surface of the container rim.

The examiner concedes (see page 3 in the answer) that Freeman lacks response to the limitations in independent claims 1 and 2 requiring the inner walls of the clamp and spout to converge smoothly to the discharge port. Freeman's closure has no such smooth convergence.

The appellants submit that Freeman is further deficient with respect to the subject matter recited in claims 1 and 2 in that the lid disclosed in the reference lacks a clamp having an inner lip. According to the examiner (see pages 2 and 3 in the answer), the unidentified ring shown in Freeman's Figures 2 and 5 constitutes a clamp inner wall. As there is nothing in Freeman's disclosure which even remotely suggests that this ring cooperates

with the peripheral lip to clamp the rim of the container, the examiner's position here is unsound. Thus, Freeman also lacks response to the limitations in claims 1 and 2 requiring a clamp having an inner lip.

Meyers, the examiner's secondary reference, discloses a self-righting cup having a removable lid. As shown in Figures 5 and 6, the lid 45 includes an upwardly extending spout 46 and a downwardly opening groove 50 "which fits snugly over the rim 34 of the cup" (column 4, line 12). In the examiner's view, this structure is such that "an inner wall of the clamp and an inner wall of the discharge spout smoothly converge to a discharge port of the discharge spout" (answer, page 3).

In proposing to combine Freeman and Meyers to reject the appealed claims, the examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an inner wall of the clamp and an inner wall of the discharge spout smoothly converging to a discharge port of the spout as taught by Meyers to the lid of Freeman by moving the inner wall of the clamp radially inwardly until such convergence is met. Doing so would allow complete drainage and a smooth flow of fluid from the lid upon attachment to a liquid filled container.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the inner wall axially, downwardly to ensure it grips as [sic] significant portion of the inner wall of the associated cup rim. Doing so would ensure a tight seal between the cup lid and the associated container rim [answer, page 3].

These conclusions find no support in the fair teachings of Freeman and Meyers. As pointed out by the appellants, "Meyers does not teach or suggest the desirability or structure of a clamp inner wall which smoothly converges with a discharge port inner wall" (main brief, page 6). Figure 6 shows Meyers' inner clamp wall as being vertical and the adjoining spout wall as being inclined to vertical. There is nothing in the reference to indicate that these angulated surfaces converge smoothly. The examiner's finding to the contrary is unduly speculative. This shortcoming, coupled with Freeman's failure to teach a clamp with inner and outer lips, undermines the examiner's conclusion of obviousness. The only suggestion for combining Freeman and Meyers so as to arrive at the subject matter recited in claims 1 and 2 stems from hindsight knowledge impermissibly derived from the appellants' disclosure.

Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1 and 2, and dependent claim 3, as being unpatentable over Freeman in view of Meyers.

Appeal No. 2003-0107
Application 09/491,094


SUMMARY

The decision of the examiner to reject claims 1 through 3 is reversed.


REVERSED



NEAL E. ABRAMS
Administrative Patent Judge


JOHN P. McQUADE
Administrative Patent Inc.

~~JOHN P. McQUADE~~
Administrative Patent Judge


JEFFREY V. NASE

JEFFREY V. NASE
Administrative Patent Judge

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Appeal No. 2003-0107
Application 09/491,094

Frank J. Catalano
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MEMO

To: E. Rollins-Cross, Director, TC 3700
From: Nathan Newhouse, Acting SPE, Art Unit 3727
Re: Re-opening prosecution in 09/491,094
Date: 03 September 2003



This is an application in which the decision of the primary examiner (Robin Hylton) to finally reject claims 1 through 3 was reversed by the Board of Patent Appeals and Interferences. See paper number 16 for the BPAI decision. Subsequent to the decision, a newly discovered reference, USP 4,961,510 to Dvoracek, was found which clearly anticipates appealed claims 1 through 3.

Dvoracek shows a lid (10) having an annular clamp comprising an outer lip (28) and an inner lip (unnumbered extending downwardly radially inward of 28) to receive the rim of a cup. See column 4, lines 12-15 describing that the clamp (inner and outer lip) "captures" the ridge (32) of the container. The lid has a spout (24) extending upwardly from the top to a discharge port (26) and located above the clamp. The inner wall of the spout and the inner wall of the clamp converge smoothly to the discharge port. This is shown in figure 3 where the inner wall of the clamp merges directly into the spout wall. See applicant's figure 3 compared to figure 3 of Dvoracek. The lid of Dvoracek is capable of being used on a "cup".

Please approve this rejection after a decision on appeal in order to reject the clearly unpatentable claims under 35 USC 102(b). I have consulted with Tom Hughes, SPE Art Unit 3714, and he agrees that the above reading of Dvoracek on the appealed claims is reasonable and proper.

Thank you for your consideration in this matter.

